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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUIS MORALES,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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01 CV 5507 (ARR)

NOT FOR
ELECTRONIC OR PRINT
PUBLICATION


OPINION AND ORDER

ROSS, United States District Judge:

By motion dated November 1, 2004, petitioner moves pursuant to Federal Rule of Civil Procedure 60(b) to reopen or set aside the March 28, 2003 Mandate of the United States Court of Appeals for the Second Circuit denying his citizenship claim. In the alternative, petitioner seeks transfer of this motion to the Second Circuit. The court lacks jurisdiction to reopen or set aside a mandate of the Second Circuit in these circumstances. Although, upon finding a want of jurisdiction, courts are directed to transfer matters to a competent court, the court is constrained to do so only if it finds transfer to be in the interest of justice. 28 U.S.C. § 1631. Here, because plaintiff's factual showing fails to satisfy the statutory requirements of 8 U.S.C. § 1401, justice is not served by such a transfer.

Accordingly, the court declines to transfer petitioner's motion and the motion is dismissed. The Clerk of the Court is directed to enter judgment accordingly.

SO ORDERED.



Allyne R. Ross
United States District Judge

Dated: August 16, 2005
Brooklyn, New York

SERVICE LIST:

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cc: Magistrate Judge Pollak